IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4 4 08

CORAM:

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

WP.No.29406/2007
MP.No.1/2007

Tvl.Swastik Laminators by its Partner
Umesh K.Mangal, Chennai-79 Petitioner

Vs

1.The State of Tamil Nadu by its Secretary to Government
Fort St.George, Chennai-9

2.The Commissioner of Commercial Taxes, Chennai-5

3.The Commercial Tax Officer, Peddunickenpet
(North) assessment Circle, Chennai Respondents
Prayer:- This Writ Petition is filed under Art.226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 2nd Respondent in D.Dis.Acts.Cell.II/41897/2004 dated 12.8.2004 Clarification NO.205/2004 and connected letter No.Drafting.Cell.I/2456/ 2007 dated 26.3.2007 and quash the same as being invalid, illegal and contrary to the statutory entry in Part B in item 44 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959.
For Petitioner : Mr.A.R.Jeyasankar

For Respondents : Mr.R.Mahedevan, AGP

ORDER
1.The clarification of the 2nd Respondent dated 12.8.2004 is challenged in this Writ Petition.
2.Originally, the packing materials were included in the entry in Part B in item 44 of the First Schedule, which is relating to the period from 27.3.2002. The Petitioner has sought for clarification before the Commissioner, who passed an order, stating that the packing material namely low density polythene or sheet and high density polythene or sheet used for packing are included under GO.Ms.No.71 dated 20.6.2005, hence the Petitioner is entitled to the said benefits from the date of the said GO and not from the original date of entry i.e. 27.3.2002.
3.The Apex Court laid down a ratio in Government of India and others Vs. Indian Tobacco Association (2005-7-SCC-396) wherein paragraph 23, it is stated as under:-
"23. If the Central Government intended to extend the benefit to the members of the Respondent Association only with prospective effect, it could have said so explicitly. Such a benefit could also have been extended by taking recourse to the proviso appended to sub clause (iv) of clause (2) of the notification dated 7.4.1997. It, may, therefore, be safely concluded that by reason of the amended notification, the Central Government only intended to rectify a mistake, and thus, the same will have retrospective effect and retroactive operation"
4.Applying the said ratio laid down by the Apex Court, this court is of the considered view that the products included in GO.Ms.No.71 dated 26.2.2005 have been taken as amended to earlier inclusion dated 27.3.2002. Accordingly, it is ordered that the Respondents are directed to include the said

product from the date of original entry 27.3.2002. In view of the said finding, the impugned communication is set aside. This Writ Petition is ordered as prayed for accordingly. No costs.

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To:

1.The State of Tamil Nadu by its Secretary to Government
Fort St.George, Chennai-9

2.The Commissioner of Commercial Taxes, Chennai-5

3.The Commercial Tax Officer, Peddunickenpet
(North) assessment Circle,
Chennai